RECORD AND BRIEFS

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IN THE
Supreme Court of the United States

STACY FRY, ET VIR., AS NEXT FRIENDS OF MINOR E.F.,
Petitioners,

v.

NAPOLEON COMMUNITY SCHOOLS, *et al.*
Respondents.

On Writ of Certiorari to the
United States Court of Appeals
for the Sixth Circuit

BRIEF FOR RESPONDENTS

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QUESTION PRESENTED

Whether 20 U.S.C. § 1415(*l*) required petitioners to exhaust the state administrative procedures set forth in the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.*, before filing a civil action seeking monetary and declaratory relief under the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.*, and the Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq.*

PARTIES TO THE PROCEEDING

Stacy Fry and Brent Fry were plaintiffs-appellants below as next friends of E.F., a minor.

Napoleon Community Schools, the Jackson County Intermediate School District, and Pamela Barnes were defendants-appellees below.

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BRIEF FOR RESPONDENTS

INTRODUCTION

In 20 U.S.C. § 1415(*l*), Congress struck a balance between the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.*, and other laws that protect the rights of children with disabilities. In the provision's first half, Congress established that the IDEA does not "limit" plaintiffs' substantive rights under any other laws; parents may protect their children using the full panoply of "rights, procedures, and remedies" that the Constitution, the Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq.*, and the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 *et seq.*, afford. 20 U.S.C. § 1415(*l*). But Congress did not stop there. The second half of the provision imposes one important

limitation: If parents wish to use these other laws to "seek[] relief that is also available under [the IDEA]," they must first attempt to obtain that relief through the IDEA's procedures. *Id.*

This case presents the question whether plaintiffs who seek relief that is in *substance* available under the IDEA can sidestep that limitation merely by demanding that relief in a *form* the IDEA does not provide. The answer is no. The statute's text is concerned with the actual "redress or benefit" a plaintiff seeks, not the form in which it is pled. Black's Law Dictionary 1317 (8th ed. 2004) (defining "relief"). In other cases where it has had to characterize the relief sought in a complaint, the Court has time and again looked to the substance rather than the form of the relief demanded to determine "on which side of the line a particular case falls." *Papasan* v. *Allain*, 478 U.S. 265, 278-279 (1986). Any other interpretation of section 1415(*l*) would render it a formalistic shell—inviting litigants to opt out of exhaustion simply by incanting the right legal formulation.

Under this straightforward application of the statute's terms, petitioners' complaint was properly dismissed for failure to exhaust. That complaint asks for monetary relief that could be obtained under the IDEA by replacing the word "damages" with the label "retroactive reimbursement" or "payment for compensatory education." And it asks for a declaratory judgment that would effectively determine that a particular accommodation should have been included in an Individualized Educational Program—the *core* type of relief that the IDEA is designed to provide. If section 1415(*l*) is more than just a rule of pleading etiquette, these claims seek "relief" the

IDEA makes "available," and petitioners are required to exhaust the IDEA's remedies before bringing them to court.

STATUTE INVOLVED

The Handicapped Children's Protection Act of 1986, Pub. L. No. 99-372, § 3, 100 Stat. 796, codified at 20 U.S.C. § 1415(*l*), provides:

> **Rule of construction.**
>
> Nothing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990 [42 U.S.C. 12101 et seq.], title V of the Rehabilitation Act of 1973 [29 U.S.C. 790 et seq.], or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this subchapter, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this subchapter.

STATEMENT

A. Statutory Background

1. Congress has enacted three separate but overlapping statutes that protect the rights of schoolchildren with disabilities. The ADA requires state and local governments to provide reasonable accommodations for individuals with disabilities. 42 U.S.C. § 12132. The Rehabilitation Act prohibits disability discrimination in federally funded programs, including public schools. 29 U.S.C. § 794(a). And the IDEA—the most detailed and extensive of the stat-

utes—requires participating States to provide special education and related services to children with disabilities.

The centerpiece of the IDEA is "an enforceable substantive right to a free appropriate public education," also known as a FAPE. *Smith* v. *Robinson*, 468 U.S. 992, 1010 (1984). That holistic guarantee aims to "prepare" children with disabilities "for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A). "The primary vehicle for implementing these congressional goals is the 'individualized educational program,'" or IEP, a tailored set of educational goals and plans that "the [IDEA] mandates for each disabled child." *Honig* v. *Doe*, 484 U.S. 305, 311 (1988).

Each IEP is developed through "a cooperative process" in which "[p]arents and guardians play a significant role." *Schaffer ex rel. Schaffer* v. *Weast*, 546 U.S. 49, 53 (2005). That process begins with a "full and individual initial evaluation" of the child and her developmental needs, 20 U.S.C. § 1414(a)(1)(A), and continues with regular meetings of a specially-established "IEP Team"—comprising the child's parents, teachers, and education officials—that monitors the child's development and adjusts the IEP as necessary. *Id.* § 1414(d)(1)(B), (3)-(4). Among other things, each IEP must include a "statement" of "how the [child's] disability affects the child's participation in appropriate activities," *id.* § 1414(d)(1)(A)(i)(I), and "measurable annual goals * * * designed to * * * enable the child to be involved in and make progress in the general educational curriculum." *Id.* § 1414(d)(1)(A)(i)(II). An IEP must also identify what "special education and related services and supplementary aids and services" the

child needs, *id.* § 1414(d)(1)(A)(i)(IV), including any "specially designed instruction" the child requires to "meet [her] unique needs," *id.* § 1401(29), as well as any "related services" necessary "to assist [the] child * * * to benefit from special education." *Id.* § 1401(26). The IEP must also specify any "program modifications or supports for school personnel" necessary to enable the child "to be educated and participate with other children" in school activities. *Id.* § 1414(d)(1)(A)(i)(IV).

When parents and educators disagree on "any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a [FAPE] to such child"—including the content or implementation of an IEP—the IDEA provides an administrative process to resolve the dispute. *Id.* § 1415(b)(6). At the outset of that process, the state or local educational agency must "convene a meeting with the parents and the relevant member or members of the IEP Team" to attempt to resolve the disagreement cooperatively. *Id.* § 1415(f)(1)(B)(i). If that does not resolve the dispute "to the satisfaction of the parents," *id.* § 1415(f)(1)(B)(ii), parents have the right to an "impartial due process hearing" before an "objectiv[e]" hearing officer. *Id.* § 1415(f)(1)(A), (f)(3)(A). That hearing is governed by "an elaborate set of * * * 'procedural safeguards' to insure the full participation of the parents and proper resolution of substantive disagreements." *Sch. Comm. of Town of Burlington* v. *Dep't of Educ.*, 471 U.S. 359, 368 (1985).

If, at the conclusion of a due process hearing, the hearing officer determines that a child has not "received a free appropriate public education," the IDEA authorizes her to award "such relief as [she]

determines is appropriate." 20 U.S.C. § 1415(i)(2)(C)(iii); *Forest Grove Sch. Dist.* v. *T.A.*, 557 U.S. 230, 244 n.11 (2009) (explaining that although the statute "only provides a general grant of remedial authority to 'court[s],'" the Court has interpreted it to provide remedial authority to "hearing officers as well"). It is "undisputed" that a hearing officer may declare a child's IEP is unlawful. Perry A. Zirkel, *The Remedial Authority of Hearing and Review Officers under the Individuals with Disabilities Education Act: An Update*, 31 Nat'l Ass'n Admin. L. Judiciary 1, 9 (2011); *see* 20 U.S.C. § 1415(f)(3)(E). And it is also "clear beyond cavil," that hearing officers may award injunctive relief requiring that an IEP be modified. *Burlington*, 471 U.S. at 370; *see* Zirkel, *supra*, at 16 nn.67-68, 17.

Hearing officers may also award at least two forms of monetary relief. First, they may award "retroactive reimbursement" of money spent on private education during any period the school failed to provide a FAPE. *Burlington*, 471 U.S. at 363, 370; *see Forest Grove*, 557 U.S. at 244 n.11; *Florence Cty. Sch. Dist. Four* v. *Carter*, 510 U.S. 7, 13 (1993); *see also* 20 U.S.C. § 1412(a)(10)(B)(ii). Second, hearing officers may award prospective monetary relief for "compensatory education" including tutoring, counseling, and remedial therapy designed to compensate for "educational services [a] child should have received in the first place." *Reid ex rel. Reid* v. *Dist. of Columbia*, 401 F.3d 516, 523 (D.C. Cir. 2005); *see, e.g.*, *Foster* v. *Bd. of Educ. of City of Chi.*, 611 F. App'x 874, 878 (7th Cir. 2015); *Batchelor* v. *Rose Tree Media Sch. Dist.*, 759 F.3d 266, 277-278 (3d Cir. 2014); *Streck* v. *Bd. of Educ. of E. Greenbush Cent. Sch. Dist.*, 408 F. App'x 411, 415 (2d Cir. 2010).

Courts have generally concluded, however, that the IDEA does not permit awards of general "tort-like" damages. *Polera* v. *Bd. of Educ. of Newburgh Enlarged City Sch. Dist.*, 288 F.3d 478, 485-496 (2d Cir. 2002) (citation omitted).

If a parent is dissatisfied with any part of a hearing officer's decision, she may "bring a civil action with respect to the complaint" in either state or federal court "without regard to the amount in controversy." 20 U.S.C. § 1415(i)(2)(A), (i)(3)(A).[1] A court hearing such a suit must "receive the records of the administrative proceedings," "hear [any] additional evidence at the request of a party," and "grant such relief as the court determines is appropriate." *Id.* § 1415(i)(2)(C).

2. This Court considered the interaction between the IDEA (then referred to as the Education of the Handicapped Act (EHA)) and other statutory and constitutional provisions in *Smith* v. *Robinson*. In that case, the parents of a child with cerebral palsy brought suit under 42 U.S.C. § 1983, the Rehabilitation Act, and other laws seeking to require a State to pay for their child's placement in a private educational facility. *Smith*, 468 U.S. at 995. The Court concluded that the parents could not assert the same "substantive rights" under these statutes as were "available under" the EHA. *Id.* at 1021. In its view, the EHA's "carefully tailored scheme" indicated that Congress intended that statute to be the "exclusive avenue" for vindicating a child's right to a FAPE. *Id.*

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[1] If the hearing was conducted before a local educational agency, parents must lodge an intermediate appeal with the State educational agency. *See* 20 U.S.C. § 1415(g).

at 1012-13. Because the EHA did not provide for the recovery of attorneys' fees, the Court rejected an award of fees the parents had obtained under the Rehabilitation Act and 42 U.S.C. § 1988. *Smith*, 468 U.S. at 1011.

Justice Brennan, joined by Justices Marshall and Stevens, dissented. In the dissenters' view, "[t]he natural resolution of the conflict between the EHA" and section 1983 and the Rehabilitation Act "is to require a plaintiff with a claim covered by the EHA to pursue relief through the administrative channels established by that Act before seeking redress in the courts." *Id.* at 1024 (Brennan, J., dissenting). As long as a plaintiff had exhausted her administrative remedies, the dissenters reasoned, a subsequent award of fees did "not in any way conflict with the goals or operation of the EHA." *Id.* at 1025.

Congress adopted the dissenters' view two years later with the Handicapped Children's Protection Act of 1986 (HCPA), Pub. L. No. 99-372, 100 Stat. 796. According to the bill's chief sponsor, the HCPA was "a direct response" to *Smith*'s conclusion that the EHA "does not allow the award of attorneys' fees to parents, who, after exhausting all available administrative procedures, prevail in a civil court action to protect their child's right to a free and appropriate education." *Handicapped Children's Protection Act of 1985: Hearing on S.415 Before the Subcomm. on the Handicapped of the S. Comm. on Labor & Human Resources*, 99th Cong. 1 (1985) (opening statement of Sen. Weicker); *see* 131 Cong. Rec. S10,398-400 (daily ed. July 30, 1985) (statements of Sens. Stafford, Hatch, Kennedy, Kerry) (discussing the need to provide for fee awards). The HCPA sought to "correct this error" in two ways. 132 Cong. Rec.

S9277 (daily ed. July 17, 1986) (statement of Sen. Weicker). First, it made fees available in actions to enforce the EHA. *See* HCPA § 2, 100 Stat. 796. Second, it added a "rule of construction" to the EHA clarifying that "[n]othing in this title shall be construed to restrict or limit the rights, procedures, and remedies available under" the Constitution or federal laws "protecting the rights of children with disabilities." HCPA § 3, 100 Stat. 797.

Congress made clear, however, that its corrective was not intended to diminish "Congress' express efforts to place on local and state educational agencies the primary responsibility for developing a plan to accommodate the needs of each individual handicapped child." *Smith*, 468 U.S. at 1011. Accordingly, the HCPA also added a clause stating that "before the filing of a civil action under [other] laws seeking relief that is also available under this part," the EHA's procedures "shall be exhausted to the same extent as would be required had the action been brought under this part." HCPA § 3, 100 Stat. 797 The bill's sponsors explained that this language "makes clear that nothing in" the HCPA "should be interpreted to allow parents to circumvent the due process procedures and protections created under the EHA." S. Rep. No. 99-112, at 15 (1985) (Senate Report) (additional views); *see* 131 Cong. Rec. at S10,400 (statement of Sen. Simon) (similar).[2] If a

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[2] Congress ultimately enacted the version of Section 3 explained in the "additional views" cited here. The cited passages discuss the text of an amendment accepted by the Senate as a substitute for the committee's version of the bill. *See* 131 Cong. Rec. at S10,465; *id.* at S10,397, 10,401 (adopting the substitute amendment). That language prevailed in conference with the

suit filed under another law "*could have been filed* under the [EHA]," one of the law's sponsors explained, plaintiffs must "exhaust the administrative remedies to the same extent as would have been necessary if the suit had been filed under the [EHA]." 131 Cong. Rec. S10,400-01 (statement of Sen. Simon) (emphasis added); *see* Senate Report 3, 15; H. Rep. No. 99-296, at 7 (1985) (House Report).

B. Proceedings Below

1. Petitioner E.F. was born with cerebral palsy, which "significantly limits her motor skills and mobility." Resp. App. 6; Pet. App. 3.[3] E.F.'s condition entitles her to a "special education and related services" under the IDEA. 20 U.S.C. § 1401(9); *see* § 1412(a)(1); Pet. App. 2-3.

When E.F. enrolled at Ezra Eby Elementary School for the 2009-2010 school year, E.F.'s parents—petitioners Stacy and Brent Fry—and the school had settled on an IEP that offered her a full-time human aide for one-on-one support. Pet. App. 4; Resp. App. 8. The aide "accompan[ied]" E.F. "while at school." Pet. App. 16. E.F. had also been prescribed a service dog named "Wonder." Resp. App. 6-7. The dog is "specially trained" to assist E.F. with tasks such as retrieving dropped items and taking off her coat. Resp. App. 7; Pet. App. 3. It also helps her "to devel-

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House and was eventually signed into law. *See* 132 Cong. Rec. H4529 (daily ed. July 16, 1986); *id.* at H4845 (daily ed. July 24, 1986); HCPA § 3, 100 Stat. 797.

[3] Because the District Court dismissed the case on the pleadings, this statement takes as true the facts alleged in the complaint.

op independence and confidence and helps her to bridge social barriers." Resp. App. 7.

In October 2009, the Frys sought permission for E.F. to bring the dog to school. Pet. App. 3-4; Resp. App. 8. The school decided not to grant that permission. Pet. App. 4. In a "specially convened" meeting of E.F.'s IEP team, school officials determined that the dog "would not be able to provide any support the human aide could not provide." *Id.* As a result, E.F.'s IEP was changed to state that her parents had "requested a service dog for their daughter to enhance her independence," and that this request was denied because E.F.'s "physical and academic needs are being met through the services/programs/ accommodations of the IEP." Resp. App. 8.

The school subsequently agreed to a 30-day trial period. *Id.*; Pet. App. 4. During that period, the school placed some limitations on E.F.'s use of the dog and kept a log of parent and staff concerns. Resp. App. 8; J.A. 27 The log showed that one teacher and two students were allergic to dog dander; one parent was concerned because her child had been attacked by a dog several years before; and four parents expressed concern that the service dog would be a distraction to other students. J.A. 27-28. At the end of the trial period, the school declined to revisit its decision not to admit the dog. Pet. App. 4. As a consequence, the Frys pulled E.F. out of public school and began to homeschool her at their own expense. *Id.*; Resp. App. 9.

The Frys then filed a complaint with the Office of Civil Rights (OCR) at the Department of Education. Resp. App. 9. The OCR determined that the school's refusal to accommodate the dog had limited E.F.'s

"ability to access the District's programs and activities with as much independence as possible" in violation of the ADA and the Rehabilitation Act. J.A. 36. Without admitting liability, the school agreed to let E.F. attend school with the dog the following fall. Pet. App. 4; J.A. 43-44. Although it did not change E.F 's IEP, the school agreed to "convene a transition meeting of [s]chool administrators and all staff" to "determine how to fully integrate [E.F.'s] service dog into the educational environment." J.A. 48-49. And it agreed to call a meeting of its "IEP team" to "identify steps to ensure [E.F.'s] transition back to school and her receipt of a FAPE." *Id.* The Frys chose to send E.F to another school in a different district instead. Resp. App. 10.

2. The Frys then filed this suit in federal court, claiming that respondents violated the ADA, the Rehabilitation Act, and a Michigan civil rights law by "refus[ing] to allow Wonder to act as a service dog for [E.F.]." Resp. App. 15.[4] The complaint alleged that respondents' refusal "interfere[d] with [E.F.]'s ability to form a bond with Wonder" and "compromised Wonder's ability to effectively assist [E.F] outside of school." Resp. App. 7. It also alleged that E.F. had to be homeschooled for two years "using an online curriculum," burdening the family with "added educational responsibilities" and depriving her of access to a teacher with "specific training in teaching methods that [she] required." Resp. App. 9-10. E.F.'s time away from school also allegedly denied

[4] The District Court declined to exercise supplemental jurisdiction over the Frys' state law claim, and it is no longer at issue.

her "the opportunity to interact with other students," causing her emotional and psychological harm. Resp. App. 11.

The Frys demanded three types of relief to remedy these alleged harms. First, they asked the court to "[i]ssue a declaration that [respondents] violated" the Rehabilitation Act and the ADA. Resp. App. 21. Second, they asked for "damages in an amount to be determined at trial." *Id.* And finally, they asked the court to "[g]rant any other relief [it] deems appropriate." *Id.* The Frys also sought attorneys' fees. *Id.*

The District Court dismissed the complaint without prejudice. Reviewing the Frys' allegations, the court "fail[ed] to see how" allowing the dog into the school "would not—at least partially—implicate issues relating to EF's IEP." Pet. App. 49. "[H]aving Wonder accompany EF to recess, lunch, the computer lab and the library would * * * require changes to the IEP." *Id.* As would "handling Wonder on the playground or in the lunchroom." *Id.* Because "[a]ll of these things undoubtedly implicate EF's IEP," the court said, petitioners had to "exhaust the administrative remedies available under the IDEA before filing" their lawsuit. Pet App. 49-50.

3. The Sixth Circuit affirmed. The court concluded that "[t]he Frys allege in effect" that respondents "denied [E.F.] a free appropriate public education." Pet. App. 11. The Court of Appeals found that the thrust of the complaint was that "[d]eveloping a bond with Wonder" would allow "E.F to function more independently outside the classroom." Pet. App. 13. That was "an educational goal, just as learning to read braille or learning to operate an automated wheelchair would be." *Id.* Indeed, "developing a

working relationship with a service dog should have been one of the 'educational needs that result from the child's disability' used to set goals in E.F.'s IEP." *Id.* (quoting 20 U.S.C. § 1414(d)(1)(A)(i)(II)). While the court recognized that "[t]he Frys do not in so many words state that Wonder enhances E.F.'s educational opportunities," it noted that "if this is enough to avoid the exhaustion requirement, then any carefully pleaded claim under the ADA or Rehabilitation Act could evade the exhaustion requirement." Pet. App. 19.

The Sixth Circuit also noted that the Frys had never argued that exhaustion would be "futile." Pet. App. 17. While it was "far from clear" that the Frys could make the necessary showing, the waiver meant the court could not "decide whether the exhaustion requirement should be excused as futile." *Id.*

The Court of Appeals denied the Frys' timely motion for rehearing en banc. Pet. App. 53-54. This Court granted their petition for certiorari.

SUMMARY OF ARGUMENT

Section 1415(*l*) requires plaintiffs to exhaust the IDEA's procedures before "seeking relief"—however characterized—"that is also available under [the IDEA]." Because petitioners' complaint asks for several kinds of relief that could also be obtained, in substance, under the IDEA, it was properly dismissed for failure to exhaust.

1. Statutory text, precedent, and context all establish that section 1415(*l*)'s exhaustion requirement turns on the substance and not the form of a plaintiff's request for relief. The "familiar meaning" of the term "relief" means simply "any 'redress or benefit' provided by a court"—and the "benefit" a plaintiff

seeks does not depend on the words he uses to describe it. *United States* v. *Denedo*, 556 U.S. 904, 909 (2009) (citation omitted). The Court consistently "look[s] to the substance rather than to the form of the relief sought" in interpreting analogous provisions—like the Employee Retirement Income Security Act, 29 U.S.C. § 1001 *et seq.*, and the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*—that make a plaintiff's right to sue dependent on the type of "relief" he seeks. *Papasan*, 478 U.S. at 278-279. The Court should apply that same substance-over-form approach here, particularly given that section 1415(*l*) asks what relief is "*available*" under the IDEA—a word that refers to what "may be obtained * * * *practically speaking*" and not just "on the books." *Ross* v. *Blake*, 136 S. Ct. 1850, 1858-59 (2016) (emphasis added; citation omitted).

Any other construction would reduce section 1415(*l*) to an empty formality. If plaintiffs could opt out of section 1415(*l*) merely by phrasing a request as one for "damages," they could in effect obtain any remedy the IDEA provides without bothering to exhaust. That outcome would undermine Congress's efforts to ensure that parents and school administrators, not generalist courts, have the principal role in resolving disputes over the education of children with disabilities.

For three decades, *every* court of appeals that has interpreted section 1415(*l*) has agreed that the form of a plaintiff's prayer for relief is immaterial. Congress has not disturbed that judgment—even when reenacting the provision in 2004—and neither should the Court.

2. Petitioners and the Government contend that a prayer for relief phrased as a request for damages is categorically exempt from section 1415(*l*). But they offer no reason—none—why the statute should be given this formalistic construction. Indeed, the cases they cite support the opposite conclusion. And the Government itself took the opposite position five years ago in the Ninth Circuit and convinced the court, correctly, to adopt a functional construction of the statute.

Petitioners are also wrong to suggest that plaintiffs are exempt from section 1415(*l*) if their complaint does not allege an IDEA violation. The sole purpose of section 1415(*l*)'s exhaustion requirement—apparent on its face—is to require plaintiffs to exhaust claims brought under statutes *other than* the IDEA. Nor can plaintiffs escape the statute's requirements by conceding that a school did not violate the IDEA; that concession may be wrong, and does not alter what relief the IDEA process could in fact provide them. Petitioners' attempts to find a footing for their formalistic position in legislative history and policy are likewise unavailing.

3. Under these principles, petitioners were required to exhaust before filing this suit. Their complaint seeks at least three categories of relief also available in substance under the IDEA:

a. The complaint asks for "damages" for the injuries alleged in the complaint, Resp. App. 21, including the costs petitioners incurred homeschooling E.F. after she was denied use of a service dog, Resp. App. 8-10, and the developmental and scholastic injuries E.F. suffered as a result. Resp. App. 7, 10-11. IDEA administrators could award the very same monetary

relief in the form of "retroactive reimbursement" for private education costs, *Burlington*, 471 U.S. at 369, and "payments" to "replace[] educational services [E.F.] should have received in the first place." *Reid*, 401 F.3d at 523. The only difference would be semantic.

b. Petitioners' complaint also effectively requests a declaration that excluding a service dog from E.F.'s IEP was unlawful. Resp. App. 8, 21. But a declaration that certain services must be included in the IEP is *the* core remedy the IDEA provides. *See* 20 U.S.C. § 1415(f)(3)(E). Furthermore, issuing such a declaration would necessarily require changes to E.F.'s IEP, another form of relief the administrative process offers. The fact that petitioners have changed school districts is irrelevant; section 1415(*l*) does not allow plaintiffs to render relief "[un]available" by voluntarily foregoing the opportunity to obtain it.

c. Petitioners' complaint requests, last, "any other relief th[e] [c]ourt deems appropriate." Resp. App. 21. This request invokes the court's authority to award any relief to which petitioners are entitled, *see* Fed. R. Civ. P. 54(c), and so it too seeks numerous forms of relief "available under [the IDEA]." 20 U.S.C. § 1415(*l*).

4. Petitioners never claimed below that exhaustion would be "futile." That argument is therefore not properly before the Court. In any event, there is no basis to excuse petitioners from exhaustion: Administrators *could* award in substance the relief they seek.

ARGUMENT

I. THE IDEA REQUIRES ADMINISTRATIVE EXHAUSTION OF ANY CLAIM SEEKING RELIEF THAT IS IN SUBSTANCE AVAILABLE UNDER THE IDEA

A. Section 1415(*l*)'s Text And Purpose Establish That Plaintiffs Must Exhaust Claims Seeking Relief That Is In Substance Available Under the IDEA

Section 1415(*l*)'s text contains a simple command: Before plaintiffs may file a claim "seeking relief that is also available under [the IDEA]," they must exhaust the IDEA's administrative procedures. 20 U.S.C. § 1415(*l*). Plaintiffs cannot flout that command through artful pleading. If a plaintiff seeks relief that is *in substance* available under the IDEA, he cannot avoid exhaustion merely by demanding that relief in a *form* the IDEA does not provide. This commonsense conclusion follows from the plain meaning of the words "relief" and "available"; from the Court's consistent practice of privileging the substance of prayers for relief over their form; and from the statute's purpose of establishing a meaningful procedural check on suits against state agencies, rather than a toothless pleading suggestion. Every circuit that has interpreted section 1415(*l*) has agreed, and this Court should not disturb that consensus.

1. Section 1415(*l*)'s text and this Court's precedents require an examination of the substance rather than the form of the prayer for relief

Start with the statute's text. Section 1415(*l*) states that a plaintiff must exhaust IDEA remedies before filing "a civil action * * * seeking relief that is also available under [the IDEA]." The word "relief" has a "familiar meaning" in the law: It "encompasses any 'redress or benefit' provided by a court." *Denedo*, 556 U.S. at 909 (quoting Black's Law Dictionary 1317). And "available," as the Court reiterated just last Term, means "that which 'is accessible or may be obtained.'" *Ross*, 136 S. Ct. at 1858-59 (quoting *Booth* v. *Churner*, 532 U.S. 731, 737 (2001)). Straightforwardly read, section 1415(*l*) thus makes exhaustion hinge on what "redress or benefit" a plaintiff requests: If her complaint asks for a benefit that "may be obtained" through the IDEA's administrative procedures, then the parties must attempt to resolve their dispute in that forum, before proceeding (if necessary) to court.

Plaintiffs therefore cannot evade the IDEA process simply by recasting a request for a benefit available under the IDEA in a form the statute does not recognize. A parent cannot, for instance, go straight to court to obtain "retroactive reimbursement" for private educational expenses—a remedy the IDEA "undoubtedly" authorizes—merely by "characteriz[ing] [that] reimbursement as 'damages.'" *Burlington*, 471 U.S. at 370; *see* 20 U.S.C. § 1412(a)(10)(C)(ii); 34 C.F.R. § 300.148(c). The "redress or benefit" the plaintiff would be seeking from the court is one that the IDEA's procedures

could provide. That the plaintiff has asked for that benefit using a different label is irrelevant; the *substance* of the "relief" the plaintiff "seek[s]" is "available under [the IDEA]," and thus she must exhaust administrative remedies before pursuing it in court.

a. This commonsense interpretation of section 1415(*l*) accords with the Court's longstanding approach to construing prayers for relief. Many other statutes and legal rules restrict the types of relief plaintiffs may seek from particular defendants or in particular forums. The Court has consistently refused to render such provisions toothless by uncritically accepting the plaintiff's characterization of their request for relief. Instead, it "discern[s] on which side of the line a particular case falls" by "look[ing] to the *substance* rather than to the *form* of the relief sought." *Papasan*, 478 U.S. at 278-279 (emphasis added).

Take, for instance, the Employee Retirement Security Income Act (ERISA). Section 502(a)(3) of that statute authorizes participants, beneficiaries, and fiduciaries of employee retirement plans to "obtain * * * appropriate equitable relief" to redress violations of a plan's terms. 29 U.S.C. § 1132(a)(3). By its plain text, this provision bars plaintiffs from seeking to recover non-equitable relief such as money damages. *See Mertens* v. *Hewitt Assocs.*, 508 U.S. 248, 255 (1993). The Court has therefore concluded that ERISA plaintiffs cannot sue for relief that, although *styled* as equitable, would "in essence" or in "substance" constitute an award of money damages. *Great-West Life & Annuity Ins. Co.* v. *Knudson*, 534 U.S. 204, 210 (2002); *see Montanile* v. *Bd. of Trs. of Nat'l Elevator Indus. Health Benefit Plan*, 136 S. Ct.

651, 657 (2016) (explaining that "whether the remedy a plaintiff seeks 'is legal or equitable depends on * * * the *nature* of the underlying remedies sought'" (emphasis added; citation omitted)). Thus, in *Great-West*, the Court held that an insurer could not obtain an "injunction to compel the payment of money past due" under a retirement plan. 534 U.S. at 210; *see id.* at 208. Although the insurer "characterize[d] the relief sought as 'equitable,'" the Court explained that the insurer was actually "seeking legal relief—the imposition of personal liability on respondents for a contractual obligation to pay money." *Id.* at 210, 221. Construing the statute to permit such a recovery, the Court said, would render "[the] statutory limitation to injunctive relief * * * meaningless, since any claim for legal relief can, with lawyerly inventiveness, be phrased in terms of an injunction." *Id.* at 211 n.1; *see id.* at 216.

Or consider this Court's cases construing 5 U.S.C. § 702(a), a provision of the Administrative Procedure Act (APA) that waives the Federal Government's sovereign immunity against "[a]n[y] action in a court of the United States seeking relief other than money damages." In order to determine whether a claim asks for "money damages" within the meaning of the statute, the Court looks to "the *substance* of the [party's] suit." *Dep't of Army* v. *Blue Fox, Inc.*, 525 U.S. 255, 262 (1999) (emphasis added). So, in *Bowen* v. *Massachusetts*, 487 U.S. 879 (1988), the Court held that a suit seeking to "[e]njoin" federal officers "from failing or refusing to reimburse" a state for Medicaid expenditures was not barred by section 702(a) because "the nature of the relief sought" was not "compensation for * * * damage" but "enforce[ment] [of Medicaid's] statutory mandate itself,

which happens to be one for the payment of money." *Id.* at 887 n.10, 900-901 (citation and emphasis omitted); *see id.* at 917 (Scalia, J., dissenting) (stating that the Court "focuses on the right question: whether the claim is *in substance* one for money damages" (emphasis added)).[5] Conversely, in *Blue Fox*, the Court held that a party's request to impose "an 'equitable lien'" on certain Department of Army funds *was* "ultimate[ly] [a] claim * * * for 'money damages'"—notwithstanding that it was styled as "equitable"—because the "goal" of the lien was "to seize or attach money * * * as compensation for [a] loss" rather than to obtain "specific relief." 525 U.S. at 262-263.

The Court has applied this same substance-over-form approach to construing prayers for relief throughout its case law. It has held that the Eleventh Amendment bars parties from suing state officials for "[r]elief that *in essence* serves to compensate" them for past violations of federal law—whether that "relief is expressly denominated as damages" or is "tantamount to an award of damages * * *, even though styled as something else."

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[5] In his dissent in *Bowen*, Justice Scalia expressed concern that parts of the majority opinion could be taken to imply that section 702(a) waived immunity against any complaint framed as a "prayer for an injunction," regardless of "the substance of the claim." 487 U.S. at 915-916; *see id.* (arguing that this conclusion would "reduce [section 702(a)] to an absurdity" by making it contingent on "mere form"). The Court foreclosed that interpretation in *Blue Fox*, making clear that its analysis in *Bowen* "did not turn on distinctions between 'equitable' actions and other actions," but rather on "the substance of the State's suit." *Blue Fox*, 525 U.S. at 261-262.

Papasan, 478 U.S. at 278 (emphasis added) (citing cases). It has concluded that 28 U.S.C. § 1500 prohibits parties from "seek[ing] overlapping relief" from the Court of Federal Claims and another court, even if "[t]he formal label affixed to the form of relief sought" differs. *United States* v. *Tohono O'Odham Nation*, 563 U.S. 307, 320 n.2 (2011) (Sotomayor, J., concurring in the judgment) (describing the Court's holding in *Keene Corp.* v. *United States*, 508 U.S. 200, 212 (1993)). And it has held that a party should be deemed to prevail in obtaining "the relief he sought" for purposes of 42 U.S.C. § 1988 if he "obtain[s] *the substance* of what he sought," even though by a different "means" than the party requested. *Hewitt* v. *Helms*, 482 U.S. 755, 760-761 (1987) (emphasis added); *see Lawyer* v. *Dep't of Justice*, 521 U.S. 567, 579 (1997) (similar).[6]

It is reasonable to presume that Congress intended to incorporate the same "familiar meaning" of the term "relief" in section 1415(*l*). *Denedo*, 556 U.S. at 909; *see, e.g.*, *Astrue* v. *Ratliff*, 560 U.S. 586, 591 (2010) (presuming that a term "carries its usual and

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[6] *See also, e.g.*, *California* v. *Grace Brethren Church*, 457 U.S. 393, 407-408 (1982) (holding that a court "enjoin[s], suspend[s] or restrain[s] the * * * collection of [a] tax under State law" within the meaning of the Tax Injunction Act, 28 U.S.C. § 1341, if it "issu[es] a declaratory judgment" that "in every practical sense operate[s] to suspend collection of * * * state taxes" (quoting *Great Lakes Dredge & Dock Co.* v. *Huffman*, 319 U.S. 293, 299 (1943))); *Bowen*, 487 U.S. at 916 (Scalia, J., dissenting) (explaining that "in the 'murky' area of Tucker Act jurisprudence * * * one of the few clearly established principles is that the substance of the pleadings must prevail over their form" in determining whether a suit seeks "a money judgment" (citation omitted)).

settled meaning"); *Abramski* v. *United States*, 134 S. Ct. 2259, 2270 (2014) (construing a term consistent with "courts' standard practice, evident in many legal spheres and presumably known to Congress, of ignoring artifice when identifying the parties to a transaction"). If "equitable relief" is relief that is in "substance" equitable, *Great-West*, 534 U.S. at 216; and "relief other than money damages" is relief that is in "substance" non-compensatory, *Blue Fox*, 525 U.S. at 262; then relief "available under [the IDEA]" is relief that can *in substance* be obtained through the IDEA's procedures.

b. This construction is reinforced by the statutory term "available." As the Court explained last Term, the word "available" refers to something that is "capable of use" or that "may be obtained * * * *practically speaking*." *Ross*, 136 S. Ct. at 1858-59 (emphasis added). For this reason, *Ross* instructed courts to determine whether "remedies" are "available" for purposes of the exhaustion provision of the Prison Litigation Reform Act of 1995 (PLRA), 42 U.S.C. § 1997e, by considering whether those remedies are available "in practice" and not simply "on the books." *Ross*, 136 S. Ct. at 1859. Because that case involved allegations that a formally available grievance procedure was incapable of use, the Court identified three ways "relevant [t]here" in which on-the-books remedies may be effectively unavailable. *Id.* at 1859-60; *see id.* at 1860-61 (describing issues in that case). Like many principles of exhaustion, however, the Court's interpretation "runs both ways." *Id.* at 1857 n.1. A grievance procedure is surely "available" for purposes of the PLRA if potential complainants are aware of and can in practice make use of it, even though it is not memorialized in any official docu-

ment. *See, e.g.*, *Matthews* v. *Cordeiro*, 256 F. App'x 373, 375 (1st Cir. 2007) (per curiam) (concluding that "the practice of referring claims of excessive force directly to the superintendent evidences * * * an [available] administrative remedy"). And—to take an example from ordinary usage—one would say that "a copyist job is available" if an employer is in fact hiring someone to perform copying work, even if (for reasons of his own) the employer has given that job another title such as "assistant." By the same token, if IDEA hearing officers can in practice award a plaintiff the relief he seeks, even though using different terms, that relief is "available" within the meaning of section 1415(*l*).

2. A formalistic construction of section 1415(*l*) would undermine the statute's purpose

This construction is also supported by section 1415(*l*)'s background and purpose. As discussed above, Congress enacted section 1415(*l*) to achieve two objectives. In the provision's first half, Congress sought to overturn the Court's holding in *Smith* v. *Robinson* that the IDEA precludes plaintiffs from seeking relief for children with disabilities by means of other statutes. *See* 20 U.S.C. § 1415(*l*) (providing that "[n]othing in [the IDEA] shall be construed to restrict or limit the rights, procedures, and remedies available under" "such laws"); House Report 6 (explaining that section 1415(*l*) "reaffirm[s] the viability of section 504 and other federal statutes * * * as vehicles for securing the rights of handicapped children and youth"). And in the provision's second half—the language at issue in this case—Congress sought to "make[] clear" that while the IDEA "does

not affect the applicability of other Federal laws related to special education," it also does not "allow parents to *circumvent* the due process procedures and protections created under the [IDEA]" by "fil[ing] suit under another law that protects the rights of handicapped children." Senate Report 15 (emphasis added). Thus, "parents are required to exhaust the [IDEA's] administrative remedies" if "[a] suit *could have been filed* under the [IDEA]." 131 Cong. Rec. S10,400-01 (statement of Sen. Simon) (emphasis added). Congress thereby reaffirmed the view, endorsed by both the majority and the dissenters in *Smith*, that the IDEA "require[s] a plaintiff with a claim covered by the [IDEA] to pursue relief through the administrative channels established by that Act before seeking redress in the courts under § 504 or § 1983." *Smith*, 468 U.S. at 1024 (Brennan, J., dissenting); *see id.* at 1019 n.23 (majority opinion) ("Lower courts appear to agree * * * that unless doing so would be futile, [IDEA] administrative remedies must be exhausted before a § 504 claim for *the same relief available under the [IDEA]* may be brought." (emphasis added)).

Interpreting section 1415(*l*) to turn on the form and not the substance of the "relief" a plaintiff seeks would for all practical purposes overthrow the latter objective. If plaintiffs were exempt from the statute's exhaustion requirement so long as they sought relief in a *form* unavailable under the IDEA, litigants could "circumvent" the IDEA whenever they chose simply by framing a prayer for relief as a request for damages. That would not be difficult: as the Court has recognized, "any claim for legal relief can, with lawyerly inventiveness, be phrased in terms of an injunction"—and vice versa. *Great-West*,

534 U.S. at 211 n.1; *see Bowen*, 487 U.S. at 915-916 (Scalia, J., dissenting). Thus, if parents wanted to alter the terms of a child's IEP, they could file a Rehabilitation Act claim seeking damages for injuries allegedly caused by the IEP's provisions. Or, if parents wanted their child's school to pay for a tutor to provide remedial education, they could ask for damages for educational injuries caused by a school practice they opposed. *See, e.g.*, *CTL ex rel. Trebatoski* v. *Ashland Sch. Dist.*, 743 F.3d 524, 528 (7th Cir. 2014) (Rehabilitation Act claim for tuition reimbursement).

Congress did not intend section 1415(*l*) to be a hollow formalism. It took care to ensure that "disagreements" over the education of children with disabilities, Senate Report 15, would be resolved, whenever possible, by "state and local educational agencies" working "in cooperation with the parents or guardian of [a] child," rather than by judges in the context of adversarial litigation. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist.* v. *Rowley*, 458 U.S. 176, 208 (1982). And it sought to guarantee that, if courts must resolve a dispute over what benefits a child with a disability or her family should receive, they would have the aid of a detailed factual record, compiled by expert educational officials through a fair and impartial hearing. *See id.* at 206 (stating that Congress intended courts to have the benefit of "the records of [IDEA] administrative proceedings" and to give "due weight * * * to those proceedings"). Section 1415(*l*) should therefore be interpreted, as its plain text instructs, to require plaintiffs to exhaust any claim "seeking relief"—however described—"that is also available under [the IDEA]."

3. Every circuit that has interpreted section 1415(*l*) has concluded that the form of relief a plaintiff seeks is immaterial, and Congress has acquiesced in that interpretation

In the thirty years since Congress enacted section 1415(*l*), no fewer than nine circuits have interpreted the provision's exhaustion requirement. Without exception, every one has rejected the contention that the statute's application turns on the form of a plaintiff's prayer for relief—a consensus Congress declined to disturb when it reenacted section 1415(*l*) in 2004.

The Ninth Circuit has expressed this view with particular clarity. In *Payne* v. *Peninsula School District*—the same decision petitioners offer as an exemplar of their formalistic approach, Pets. Br. 24—that court held that "exhaustion is clearly required when a plaintiff seeks an IDEA remedy *or its functional equivalent*." 653 F.3d 863, 875 (9th Cir. 2011) (en banc) (emphasis added). Consequently, it explained, plaintiffs "cannot avoid exhaustion through artful pleading." *Id.* at 877. For instance, plaintiffs cannot bring unexhausted claims seeking damages for "the cost of counseling, tutoring, or private schooling," as that "relief [is] available under the IDEA" in the form of compensatory education. *Id.* Nor can plaintiffs go straight to court to "request[] damages to compensate for costs associated with unilaterally altering a disabled student's educational placement," because that relief can be obtained under the IDEA as retroactive reimbursement. *Id.*

Other circuits have likewise looked to the substance rather than the form of relief in applying

section 1415(*l*). The Second Circuit held that plaintiffs could not obtain an injunction granting their child "permission to bring [a] service dog to school" because "[t]he relief [they] seek * * * 'is *in substance* a modification of [their child's] IEP.'" *Cave* v. *E. Meadow Union Free Sch. Dist.*, 514 F.3d 240, 248 (2d Cir. 2008) (citation omitted; emphasis added); *see also Polera*, 288 F.3d at 487-488. The Seventh Circuit (per Judge Easterbrook) held that plaintiffs could not sue for damages "to pay for services (such as counseling) that will assist [their child's] recovery of self-esteem and promote his progress in school" because "school district[s] may be able (indeed, may be obliged) to provide these services in kind under the IDEA." *Charlie F* v. *Bd. of Educ. of Skokie Sch. Dist. 68*, 98 F.3d 989, 992 (7th Cir. 1996); *see also Perez* v. *Wis. Dep't of Corr.*, 182 F.3d 532, 538 (7th Cir. 1999) (Easterbrook, J.) ("[A] school board's ability to provide services in kind—that is, to provide money's worth—mean[s] that it [i]s impossible to draw a bright line between damages and other relief."). The Third, Eighth, and Tenth Circuits have applied similar reasoning.[7]

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[7] *See J.B.* v. *Avilla R-XIII Sch. Dist.*, 721 F.3d 588, 592-594 (8th Cir. 2013) (concluding that parents could not bring an unexhausted claim for "money damages" to "pay for education-related expenses" because the same relief was "available under the IDEA" in the form of "reimbursement for private educational services"); *Batchelor*, 759 F.3d at 277 (concluding that parents must exhaust a claim for "monetary damages" because "such an award may * * * be granted [under the IDEA] as reimbursement for certain expenses incurred"); *Ellenberg* v. *N.M. Military Inst.*, 478 F.3d 1262, 1280 (10th Cir. 2007) (holding exhaustion necessary because "the thrust of the relief

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At times these courts—as well as the other circuits that have interpreted section 1415(*l*)'s exhaustion requirement—have used a broader formulation, saying that section 1415(*l*) requires exhaustion whenever a complaint "allege[s] injuries that could be redressed *to any degree* by the IDEA's administrative procedures and remedies." *S.E.* v. *Grant Cty. Bd. of Educ.*, 544 F.3d 633, 642 (6th Cir. 2008) (citation omitted); *see Frazier* v. *Fairhaven Sch. Comm.*, 276 F.3d 52, 61 (1st Cir. 2002); *Babicz* v. *Sch. Bd. of Broward Cty.*, 135 F.3d 1420, 1422 n.10 (11th Cir. 1998) (per curiam); Pet. App. 6. To the extent this standard would force a plaintiff to exhaust claims seeking relief that is *not* in substance available under the Act, it goes too far. As explained above, section 1415(*l*) turns on the substance of the "relief" the plaintiff "seek[s]," not the nature of the injury alleged.

Nonetheless, this test should typically lead to the same results as a straightforward substance-over-form construction of section 1415(*l*)'s text. That is because whenever plaintiffs seek relief for injuries caused by a school's failure to provide an accommodation for a child with a disability, it is highly probable that awarding that relief would invalidate or alter the child's IEP—a type of relief unquestionably "available under [the IDEA]." *See Cave*, 514 F.3d at 248. Likewise, when a plaintiff seeks compensatory damages to remedy an educational injury, it is likely that some of those damages will in substance be identical to the award of retroactive reimbursement

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the [plaintiffs] requested under § 504 could be obtained through the IDEA").

or compensatory education. *See Charlie F.*, 98 F.3d at 992.

Thus, since Congress enacted section 1415(*l*), *no* circuit has construed the word "relief" to refer to the form of what a plaintiff seeks. And Congress appears to have acquiesced in that position. In 2004, against the backdrop of the circuits' consensus, it reenacted section 1415(*l*) without change. *See* Individuals with Disabilities Education Improvement Act of 2004, Pub. L. No. 108-446, § 101, 118 Stat. 2647, 2730. Had Congress disagreed with the uniform position of the lower courts, it could easily have overridden that position—much as it overrode the Court's interpretation in *Smith* when it enacted section 1415(*l*). Congress's decision to leave the statute untouched suggests that it agreed that section 1415(*l*) should not turn on the form of relief a plaintiff requests. *See Jama* v. *Immigration & Customs Enf't*, 543 U.S. 335, 349 (2005) (stating that "congressional ratification" is presumed when Congress "reenact[s] [a statute] without change" in the face of a "broad and unquestioned" "judicial consensus"); *Gen. Dynamics Land Sys., Inc.* v. *Cline*, 540 U.S. 581, 594 (2004) ("[C]ongressional silence after years of judicial interpretation supports adherence to the [consensus] view.").

B. Petitioners' And The Government's Formalistic Reading Of Section 1415(*l*) Is Unsupported By Text, Precedent, Or Purpose

Petitioners and the Government contend that section 1415(*l*) is concerned with form alone. They argue that plaintiffs are categorically exempted from exhaustion when they phrase a request for relief in

terms of damages. And they suggest that plaintiffs can opt out of the IDEA's procedures either by declining to argue or by conceding that a challenged practice does not violate the IDEA. Each limit would eviscerate section 1415(*l*)'s exhaustion requirement, and neither is supported by its text.

1. Requests for damages are not categorically exempt from section 1415(*l*)'s exhaustion requirement

a. Petitioners and the Government start with the argument that section 1415(*l*) *never* requires exhaustion of claims for compensatory damages. *See* U.S. Br. 16, 18; Pets. Br. 16, 18-19. They reach this bright-line rule by way of a deceptively attractive syllogism: section 1415(*l*) mandates exhaustion only when a plaintiff "seek[s] relief that is also available under [the IDEA]"; the IDEA does not authorize relief in the form of compensatory damages; hence, requests for compensatory damages cannot be "seeking relief" available under the IDEA. *See* U.S. Br. 16; Pets. Br. 18.

Conspicuously absent from this argument is any explanation of why the term "relief" should be construed to refer to the form and not the substance of what a plaintiff seeks. The word itself does not require it; its "familiar meaning" is "any redress or benefit provided by a court," *Denedo*, 556 U.S. at 909 (internal quotation marks omitted), and the IDEA plainly makes available many of the same "benefit[s]"—including money—that plaintiffs may seek in the form of compensatory damages. *See, e.g.*, *Burlington*, 471 U.S. at 363; *Streck*, 408 F. App'x at 415. Nor is such an interpretation supported by precedent—on the contrary, as described above, the Court

has consistently construed the term "relief" to refer to the "substance" and not the form of the benefit a plaintiff seeks. *See, e.g.*, *Great-West*, 534 U.S. at 210; *Blue Fox*, 525 U.S. at 262.

Indeed, the Government itself has previously cautioned against assigning talismanic significance to the formulation of a claim as one for "money damages" rather than "equitable relief." In *Bowen*, it told this Court that because "[*e*]*very* complaint seeking the recovery of money could be framed as a request for an 'injunction,'" the determination of whether a plaintiff seeks "relief other than money damages" under the APA must turn on whether "those complaints *in substance* do not seek 'money damages,'*** not because of the way in which the complaints have been drafted." U.S. Br. 22-23, *Bowen*, *supra* (Nos. 87-712, 87-929) (second emphasis added). The Court accepted that substance-over-form approach to construing the statute. *See Bowen*, 487 U.S. at 901 (considering "the *nature* of the relief sought" (emphasis added)); *Blue Fox*, 525 U.S. at 261-262 (explaining that "*Bowen's* analysis*** did not turn on distinctions between 'equitable' actions and other actions" but on "the substance of the State's suit"). It is surprising, then, that the Government now claims that *Bowen* lends support to its newfound view that "the specific forms of relief requested in the complaint" control. U.S. Br. 17 The Government urged this Court to bar plaintiffs from using "formalistic device[s]" to evade the APA's restrictions, U.S. Br. 10, *Bowen*, *supra* (Nos. 87-712, 87-929); there is no reason those devices should be allowed for section 1415(*l*).

Petitioners look to *Montanile* to support their formalistic construction of the statute. Pets. Br. 27

But this too gets things backwards. In *Montanile*, this Court did not simply accept the plaintiffs' characterization of "the remedy sought" as "legal," as petitioners suggest. 136 S. Ct. at 658. Rather, consistent with its general practice in ERISA cases, the Court closely examined the plaintiffs' request for an "equitable lien" to determine whether the relief they sought was in fact "equitable *in nature*." *Id.* at 657 (emphasis added).

Casting about for some authority aligned with its proposed construction, the Government cites Federal Rule of Civil Procedure 8(a)(3), which requires plaintiffs to specify "the relief sought" in a complaint. *See* U.S. Br. 16. Yet this instruction provides no answer to the question whether it is the *substance* or the *form* of the relief that matters. If anything, Rule 8 suggests the former: it states that "[p]leadings must be construed so as to do justice," Fed. R. Civ. P. 8(e)—a requirement that, "[a]t base, * * * command[s] [courts] never to exalt form over substance." *Phillips* v *Girdich*, 408 F.3d 124, 128 (2d Cir. 2005).

The Government also asserts that a claim for damages cannot be seeking relief "available under [the IDEA]" because damages are a legal rather than equitable remedy, and a court's authority to grant relief under the IDEA is equitable. U.S. Br. 18. But the characterization of a remedy as legal rather than equitable does not affect the substance of the "redress or benefit" the plaintiff seeks. Money paid as "compensation" for private educational expenses is no different than money paid as "reimbursement" for those expenses. *Burlington*, 471 U.S. at 370. In either case, the upshot is the same: the plaintiff is made whole and the defendant writes a check. The

Government offers no reason why this label matters under section 1415(*l*).[8]

The Government's position here is all the more baffling since it previously argued that a request for compensatory damages should *not* inoculate plaintiffs from section 1415(*l*)'s exhaustion requirement. In its brief in *Payne*, the Government told the *en banc* Ninth Circuit that plaintiffs cannot "challenge an ongoing IDEA-related practice without proper exhaustion simply by requesting only compensatory damages" because "[o]btaining such damages requires a judicial declaration" that the child's IEP is unlawful, a type of relief that is "available under the IDEA." U.S. Br. 22, *Payne*, *supra* (No. 07-35115); *see also Fair Assessment in Real Estate Ass'n, Inc.* v. *McNary*, 454 U.S. 100, 107 (1981) (noting that an award of damages would "require a federal-court declaration" that the challenged conduct violated plaintiffs' rights).[9] The Ninth Circuit agreed, ex-

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[8] Nor does it matter for purposes of section 1415(*l*) whether a sought-after remedy is better characterized as "legal" or "equitable." The Court engaged in that inquiry in its cases applying ERISA and the APA because the statutory text required it. *See* 29 U.S.C. § 1132(a)(3) (allowing only "equitable relief"); 5 U.S.C. § 702(a) (permitting only "relief other than money damages"). In contrast, section 1415(*l*) asks whether a plaintiff seeks "relief that is also *available* under [the IDEA]." This inquiry thus does not turn on the characterization of the relief as "legal" or "equitable," but on whether that relief may in substance be "obtained"—and "practically speaking," at that, *Ross*, 136 S. Ct. at 1859—under the statute.

[9] As the Government implicitly acknowledged elsewhere in the same brief, there is no actual requirement that the practice be "ongoing." The IDEA offers a range of remedies, from reimbursement to compensatory education, to address *past*

plaining that "exhaustion is clearly required when a plaintiff seeks an IDEA remedy *or its functional equivalent*." *Payne*, 653 F.3d at 875 (emphasis added); *see id.* at 877. Although the Government has inexplicably abandoned that position as well, it remains correct, and belies the contention that a claim for money damages is categorically exempt from exhaustion under section 1415(*l*).

b. Petitioners and the Government both make much of the fact that section 1415(*l*) uses "different language" than the PLRA. Pets. Br. 32; U.S. Br. 20, 24-25. True enough: the PLRA requires exhaustion whenever *any* "administrative remedies * * * are available" to redress a plaintiff's injury, 42 U.S.C. § 1997e(a), whereas section 1415(*l*) requires exhaustion only when the IDEA makes available the "relief" the plaintiff is "seeking," 20 U.S.C. § 1415(*l*). Contrary to petitioners' and the Government's suggestion, however, that distinction is entirely consistent with the "familiar meaning" of the tem "relief" as the *substance* of the "redress" a plaintiff seeks. *Denedo*, 556 U.S. at 909. If the IDEA's administrative procedures cannot provide the plaintiff the relief she requests *in any form*, then section 1415(*l*) does not require exhaustion, even if the IDEA could in theory redress the plaintiff's injury in some other way.

Thus, for example, section 1415(*l*) typically would not require a plaintiff to exhaust IDEA procedures before seeking damages to compensate for pain and suffering or medical expenses incurred as a result of discrete instances of past abuse. *Cf. Payne*, 653 F.3d

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IDEA-related misconduct. *See* U.S. Br. 23-24, *Payne*, *supra*, (No. 07-35115); *Burlington*, 471 U.S. at 370.

at 883 (suggesting that excessive force and unlawful confinement claims seeking "general damages for extreme mental suffering and emotional distress" would not be subject to exhaustion); *F.H. ex rel. Hall* v. *Memphis City Schs.*, 764 F.3d 638, 644 (6th Cir. 2014) (holding that a plaintiff need not exhaust a section 1983 claim seeking damages for "verbal, physical, and even sexual abuse"). An award of damages in such a case would presumably not implicate the validity of the child's IEP. *See Muskrat* v. *Deer Creek Pub. Schs.*, 715 F.3d 775, 786 (10th Cir. 2013). Nor would the child be able to obtain any part of the monetary relief requested through IDEA procedures. Section 1415(*l*) would therefore not require exhaustion, even if a hearing officer could conceivably award the plaintiff other appropriate relief that she did *not* request, such as an order requiring "training of * * * school district personnel" or a prospective change in educational placement. Zirkel, *supra*, at 411, 417-418. By contrast, the PLRA requires exhaustion of a claim for money damages for past abuse "*regardless* of the fit between [the] prayer for relief and the administrative remedies possible." *Booth*, 532 U.S. at 739 (emphasis added).

Nor are instances of past abuse the only circumstances in which section 1415(*l*) does not require exhaustion. Parents also do not need to pursue administrative remedies where they complain of laws or policies IDEA administrators are powerless to review. For example, some courts have excused exhaustion in suits alleging "systemic issues" such as a State's "total failure to prepare and implement IEPs" for eligible children. *Handberry* v. *Thompson*, 446 F.3d 335, 343-344 (2d Cir. 2006) (brackets and

citation omitted); *Beth V. ex rel. Yvonne V.* v. *Carroll*, 87 F.3d 80, 89 (3d Cir. 1996) (suit challenging "sufficiency of the state's complaint procedures"); *see also* Ill. & Minn. Am. Br. 10-11. Reading section 1415(*l*)'s exhaustion requirement to turn on the substance of a plaintiff's prayer for relief thus faithfully preserves the important limits Congress placed on its scope.

2. Plaintiffs must exhaust claims seeking relief available under the IDEA even if they do not allege that the challenged conduct violated the IDEA

At several points, petitioners suggest that exhaustion is not required under section 1415(*l*) if plaintiffs do not allege that the conduct they challenge violated the IDEA, or do not argue that their child was deprived of educational benefits. *See* Pets. Br. 18-19, 31, 43-44, 47. That argument is wrong.

The requirement of exhaustion under section 1415(*l*) turns on what relief a plaintiff seeks, not why he seeks it. If the plaintiff asks for some "redress or benefit," *Denedo*, 556 U.S. at 909, "available under [the IDEA]" in substance, then exhaustion is required regardless of the plaintiff's legal theory.

Petitioners' argument would rewrite the statute. The whole purpose of section 1415(*l*)—evident on its face—is to address claims brought under *other* statutes. That is why the statute says that plaintiffs "seeking relief that is also available under [the IDEA]" must exhaust IDEA procedures "before the filing of a civil action under" "the Constitution, the [ADA], title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities." 20 U.S.C. § 1415(*l*). The HCPA's

drafters thus intended section 1415(*l*) to capture actions that "*could* have been brought under [the IDEA]"—not just those that actually invoke it. Senate Report 12 (emphasis added). But under petitioners' reading of the statute, exhaustion would apply only when a plaintiff "fil[es] a civil action" invoking *both* the IDEA *and* another statute. That is not what Congress said.

Once again, the Government previously embraced that view. In *Payne*, it told the *en banc* Ninth Circuit that exhaustion is required whenever a plaintiff "'seek[s] relief that is also available under'" the IDEA, "no matter what legal theory is used" and "regardless of whether the claim is pleaded under another law." U.S. Br. 22-23, *Payne*, *supra* (No. 07-35115). Accordingly, it explained, if a request for relief "'*could* have been brought under' the IDEA," parents may not attempt to "short-circuit the IDEA process by going to court prematurely." *Id.* at 22 (quoting Senate Report 12).

While the Government has not explicitly acknowledged abandoning that position here, it now appears to endorse a different path by which a plaintiff could short-circuit the IDEA process: by "expressly conced[ing] that the defendant's conduct did not violate the IDEA." U.S. Br. 18. "In such circumstances," the Government argues, "the concession makes clear that there is no dispute that the child at issue received a FAPE, and thus that there is no available remedy under the IDEA." *Id.*

The Court need not address this issue. As the Government acknowledges, its argument is "not directly implicated by petitioners' question presented." *Id.* Nor is there any indication in the record that peti-

tioners actually made such a concession in this case. Nonetheless, the Government is wrong. A concession that a defendant has not violated the IDEA does not mean relief is unavailable under the IDEA. For one thing, the plaintiff may simply have foregone a valid claim. And even if a plaintiff might not, for any number of reasons, ultimately prevail in obtaining the relief he seeks through the administrative process, that does not mean he can opt out of exhaustion. Section 1415(*l*) asks only whether the relief the plaintiff seeks is "available." And relief is "available" so long as an IDEA hearing officer can award it. *See Ross*, 136 S. Ct. at 1858-59. The statute leaves the question of whether that relief *should* be awarded to the "elaborate and highly specific procedural safeguards" Congress designed for that purpose. *Rowley*, 458 U.S. at 205. Parents may not "circumvent" that process by making their own determination that IDEA procedures would be ineffective or insufficient. Senate Report 15.

3. Petitioners' arguments from legislative history and policy are unpersuasive and irrelevant

Petitioners and the Government argue that their formalistic reading of section 1415(*l*) follows from the statute's purpose. Because Congress sought to overrule *Smith* and reaffirm the availability of other statutes as "separate vehicles for ensuring the rights of handicapped children," the argument goes, it must have meant to let "a plaintiff [who] does *not* seek IDEA relief" proceed immediately to court. U.S. Br. 26-27 (emphasis added); *see* Pets. Br. 36-37. Fair enough. But that just begs the question, yet again, what it means to "seek IDEA relief." Neither peti-

tioners nor the Government can point to any evidence in the legislative history that Congress intended to abandon the "familiar meaning" of the term "relief" in section 1415(*l*) or to invert the ordinary substance-over-form approach to interpreting complaints. *Denedo*, 556 U.S. at 909.

In any event, Congress's desire to overrule *Smith* explains only the first half of section 1415(*l*). Congress chose not to stop there. Instead, it added a proviso that made clear that other remedies must coexist with the IDEA's comprehensive scheme.

Petitioners insist that this proviso should be narrowly construed. As evidence, they cite a failed proposal floated in committee hearings in the House and Senate that would have limited non-IDEA remedies to cases where the IDEA does not apply at all. *See Handicapped Children's Protection Act: Hearing on H.R. 1523 Before the Subcomm. on Select Educ. of the H. Comm. on Educ. & Labor*, 99th Cong. 27 (1985) (statement of Jean Arnold, Nat'l School Bd. Ass'n); Pets. Br. 34-35 & n.8. But Congress's decision not to cut off other rights and remedies in cases covered by the IDEA does not imply that it abandoned the "elaborate set" of "procedural safeguards" Congress designed to ensure "proper resolution of substantive disagreements" regarding the education of children with disabilities. *Burlington*, 471 U.S. at 368; Senate Report 15. Allowing plaintiffs to avoid that process based purely on the *form* of relief sought would undermine the legislative judgment that administrative proceedings are the proper forum to address complex matters of educational policy in the first instance. *See Rowley*, 458 U.S. at 208. And it would give litigants an easy end-run around the exhaustion provision Congress crafted.

With no sure footing in the legislative history, petitioners and the Government fall back on policy concerns. But their arguments once again presuppose that administrative proceedings are "incapable of resolving the actual dispute at hand." U.S. Br. 27; *see* Pets. Br. 41 (characterizing administrative proceedings as "time-consuming and futile"). That is simply not the case where the IDEA offers the relief the plaintiff seeks in substance.

Furthermore, while there may be situations where a plaintiff ultimately cannot show she is entitled to administrative relief, even though her claims support an award of damages in subsequent civil litigation, that does not make exhaustion "pointless." U.S. Br. 30. Complaints that seek relief available in substance under the IDEA will necessarily require scrutiny of the "special education and related services" offered to the child in question. 20 U.S.C. § 1401(9) (defining a FAPE). The factual record developed by an educational expert in such a case is likely to be useful to a generalist court.

And there is scant evidence that such proceedings impose undue "costs and delay." Pets. Br. 42; *see* U.S. Br. 27 The IDEA provides that parents may obtain attorneys' fees incurred during administrative proceedings. *See* 20 U.S.C. § 1415(i)(3)(B)(i). So prevailing plaintiffs can recover at least some of the expenses of exhaustion. And although petitioners cite commentators for the proposition that IDEA procedures are slow-moving, the statute and accompanying regulations set a tight timeline. *Compare* Pets. Br. 38-41 *with* 20 U.S.C. § 1415(f)(1)(B)(ii) (hearing to take place within 30 days of filing a complaint); 34 C.F.R. § 300.515(a) (decision due within 45 days of hearing); *id.* § 300.515(b) (adminis-

trative appeal to conclude within 30 days of request). A recent study by the Government Accountability Office (GAO) found that more than half of the decisions in due process hearings issued within the 45-day timeline. GAO, *Special Education: Improved Performance Measures Could Enhance Oversight of Dispute Resolution* fig. 6, at 25 (Aug. 2014). In sum, petitioners can identify no policy that would justify abandoning this Court's established practice of looking to the "essence" of the relief a plaintiff seeks when applying section 1415(*l*). *Papasan*, 478 U.S. at 278.

II. PETITIONERS WERE REQUIRED TO EXHAUST THEIR CLAIMS

Because section 1415(*l*) bars plaintiffs from going straight to court to obtain relief, however styled, that is also available under the IDEA, courts must carefully scrutinize complaints to determine what "redress or benefit[s]" they actually seek. As all parties agree, this inquiry must focus solely on what the "civil action * * * seek[s]"—that is, on what the *complaint* requests—not on the parties' extrinsic statements or private objectives. 20 U.S.C. § 1415(*l*); *see* Pets. Br. 23-24; U.S. Br. 16.

In conducting this inquiry, courts must deem a complaint to "seek[]" any remedy that is fairly encompassed within its prayer for relief—regardless whether that prayer is phrased broadly or narrowly. This follows as a matter of ordinary complaint construction: Rule 8(a)(3) "does not require that the demand for judgment be pled with great specificity," and courts regularly deem plaintiffs to "seek[] an[y] award" that falls within the corners of their remedial demands. *Sheet Metal Workers Local 19* v. *Keystone*

Heating & Air Conditioning, 934 F.2d 35, 40 (3d Cir. 1991) (citing 5C Charles Alan Wright *et al.*, *Federal Practice and Procedure* § 1255 (2d ed. 1990)). It also makes sense; otherwise, plaintiffs could file unexhausted claims for relief available under the IDEA simply by framing their prayers for relief in broad terms that do not specifically identify relief the IDEA provides.

Under the foregoing standards, each of petitioners' claims must be dismissed for failure to exhaust. Petitioners' complaint seeks at least three categories of relief—not including attorneys' fees—that are also available under the IDEA. It seeks monetary relief that would include reimbursement for the costs of both E.F.'s homeschooling and future compensatory education. It seeks a declaratory judgment that would effectively determine that a component of E.F.'s IEP is unlawful and must be changed. And it asks for "all other appropriate relief"—a broad request that must be construed to seek each of the foregoing remedies, as well as any number of other forms of relief the IDEA makes available.

A. Petitioners' Complaint Seeks Monetary Relief Available Under The IDEA

Petitioners' complaint first asks that the court "[a]ward her damages in an amount to be determined at trial." Resp. App. 21. The complaint does not specify how the damages should be calculated or what they would compensate for. Accordingly, this request "seeks" any damages a jury might "[a]ward" on the basis of the allegations in the complaint. And at least two types of damages the jury might award would be identical in substance to monetary relief petitioners could obtain under the IDEA.

First, the complaint pleads allegations that, if established, could support an award of "retroactive reimbursement" for private education costs petitioners allegedly incurred because of the conduct they challenge. *Burlington*, 471 U.S. at 370. Specifically, the complaint alleges that "[a]s a result" of respondents' failure to "recognize Wonder as a service dog," E.F.'s parents "removed [E.F.] from Ezra Eby Elementary School" and homeschooled her for two years. Resp. App. 9. Petitioners allege that they used "an online curriculum" during this time, and that E.F.'s mother "took on the added educational responsibilities," a role the complaint describes as "challenging and frustrating" because of her lack of "training." Resp. App. 9-10.

If petitioners prevailed in court, a jury could award damages for all of these homeschooling costs: the expense of supplies, the tuition paid for the online curriculum, the time spent educating E.F., and any lost wages. *See, e.g.*, *CTL*, 743 F.3d at 528 (awarding tuition reimbursement in Rehabilitation Act suit). The IDEA authorizes the same relief in all but name. It empowers hearing officers to "order school authorities to reimburse parents for their expenditures on private special education for a child." *Burlington*, 471 U.S. at 369. The Department of Education has explained that homeschooling should be treated just like any other private placement under the IDEA if "the State recognizes home schools * * * as private elementary schools," which Michigan does. 71 Fed. Reg. 46,540, 46,594 (Aug. 14, 2006); *see* Mich. Comp. Laws § 380.1561(3)(a), (f), (4). Thus, a hearing officer could award petitioners monetary compensation for their out-of-pocket costs, as well as for the time they spent educating E.F. *See J.B.*, 721 F.3d at 593-594

(stating that a hearing officer may award "reimbursement of tuition" as well as other "private educational services"); *Bucks Cty. Dep't of Mental Health/Mental Retardation* v. *Pennsylvania*, 379 F.3d 61, 68-69 (3d Cir. 2004) (concluding that parents may be "paid for [their] time").

Second, petitioners' complaint contains allegations that would support the award of monetary relief for "compensatory education"—another remedy squarely within the authority of a hearing officer. *See, e.g.*, *Reid*, 401 F.3d at 523. In particular, the complaint describes numerous respects in which respondents' conduct allegedly harmed E.F.'s educational development. It states that by failing to recognize Wonder as a service dog, respondents "interfere[d] with [E.F.]'s ability to form a bond with Wonder" and "compromised Wonder's ability to effectively assist [E.F.] outside of school," thereby impairing her ability to "develop independence and confidence" and "bridge social barriers." Resp. App. 7, 11; *see* Resp. App. 8. It alleges that during E.F.'s homeschooling she was deprived of a teacher with "specific training in teaching methods that [she] required." Resp. App. 10. And it alleges that while E.F. was homeschooled, and later when respondents allegedly caused her to leave Ezra Eby Elementary, E.F. was "deni[ed] * * * the opportunity to interact with other students at" that school or "with children her own age." Resp. App. 11.

Were petitioners to prevail in their suit, a jury would presumably award them monetary relief to remedy each of these harms. Thus, petitioners would be compensated for the alleged injuries to E.F.'s "independence," the harms to her social development, and the temporary loss of a teacher with

"training in teaching methods that [E.F.] required." In practical terms, these damages would likely be measured by the costs of tutoring, therapy, and similar assistance designed to help E.F. make up for the progress she lost. *See Charlie F.*, 98 F.3d at 992.

Petitioners could obtain substantially the same monetary award under the IDEA. Each of the injuries petitioners allege—to E.F.'s independence, her socialization, and her scholastic education—is of a type the IDEA is designed to prevent. A core purpose of the statute is to "prepare [children with disabilities] for * * * *independent* living," 20 U.S.C. § 1400(d)(1)(A) (emphasis added), and the Act's enabling regulations require schools to provide an array of services to foster independence, *see, e.g.*, 34 C.F.R. § 300.39(b)(4) (discussing "travel training"); *id.* § 300.34(c)(6)(ii)(B) (describing occupational therapy intended to "[i]mprov[e] [a child's] ability to perform tasks for independent functioning"). Other IDEA provisions are concerned with children's social development. *See* 20 U.S.C. § 1401(3)(B)(i) (defining "delays * * * in * * * social or emotional development" as a disability for children between the ages of 3 and 9); 34 C.F.R. § 300.34(a), (c)(14) (defining "related services" to include "social work services" such as "[g]roup and individual counseling with the child and family"). And E.F.'s alleged loss of a teacher with "specific training in teaching methods that [she] required" closely tracks the statutory guarantee of "specially designed instruction * * * to meet the unique needs of a child." 20 U.S.C. § 1401(29) (defining "special education").

Thus, a hearing officer might award petitioners "compensatory education," in the form of either money or services, to address each of their alleged

injuries. *Reid*, 401 F.3d at 522-523; *see, e.g.*, *Streck*, 408 F. App'x at 415 (monetary award for compensatory education); *Ferren C.* v. *Sch. Dist. of Phil.*, 612 F.3d 712, 720 (3d Cir. 2010) (same). That might include money to pay for "educational services [E.F.] should have received in the first place"—such as tutoring or remedial training with her service dog. *See Batchelor*, 759 F.3d at 277 n.12. It might also include money for services—such as therapy—that would "place [E.F.] in the same position [she] would have occupied but for the school district's" alleged failures. *Reid*, 401 F.3d at 518; *see B.D.* v. *Dist. of Columbia*, 817 F.3d 792, 798-799 (D.C. Cir. 2016) (award must both make up for what school failed to provide and remedy the injury caused by that failure). These monetary awards might well be the same in substance as all or part of what petitioners ask for in their complaint.

Petitioners disagree, asserting that the only thing for which their complaint seeks compensation is "social and emotional harm," and that it therefore "does not allege any harm to E.F.'s education or any ongoing harm to her development * * * redressable in the IDEA proceedings." Pets. Br. 44; *see id.* at 18, 49. But counseling services for social and emotional problems are an available remedy under the IDEA. *See* 34 C.F.R. § 300.34(a) (defining "related services" to include "corrective" services such as "psychological services" and "counseling services"); *see id.* § 300.34(c)(10)(v). And, in any event, that characterization of petitioners' complaint is incomplete at best; as noted, petitioners also allege harms to E.F.'s independence, socialization, and her education that unquestionably are redressable under the IDEA.

B. Petitioners' Complaint Effectively Seeks A Judgment Declaring E.F.'s IEP Invalid And Requiring That It Be Modified

Petitioners' complaint also asks for "a declaration stating that [respondents] violated [E.F.'s] rights under Section 504 of the Rehabilitation Act" and "Title II of the [ADA]." Resp. App. 21. (As explained, *supra* pp. 35-36, petitioners' claim for damages necessarily entails a similar request.) According to the complaint, respondents violated E.F.'s rights under each statute by "refus[ing] to allow Wonder to act as a service dog for [E.F.] and to permit his access in the instructional setting." Resp. App. 15; *see* Resp. App. 17-18 (similar). And, as the complaint further recites, respondents effected that refusal by denying petitioners' request to include Wonder in E.F.'s IEP. Resp. App. 8.

Petitioners thus seek, in effect, a declaration that respondents improperly excluded a service dog from E.F.'s IEP. More than that, they effectively demand a judicial determination that E.F.'s IEP *ought* to have provided for a dog. As the Sixth Circuit observed, if petitioners are right, then "developing a working relationship with a service dog should have been one of the 'educational needs that result from the child's disability' used to set goals in E.F.'s IEP." Pet. App. 13 (quoting 20 U.S.C. § 1414(d)(1)(A)(i)(II)).

That relief is plainly available under the IDEA. *See* Zirkel, *supra*, at 9 (explaining that a hearing officer's authority to declare an IEP unlawful is "undisputed"). The central purpose of the IDEA's due process procedures is, after all, to give parents a forum for challenging an IEP. *See Honig*, 484 U.S. at 311-12; *see also* 20 U.S.C. § 1415(f)(3)(E)(i). By

obtaining a declaratory judgment that E.F.'s IEP was unlawful, petitioners would obtain the very remedy IDEA procedures were designed to provide.

Moreover, that declaratory judgment would in turn compel the District to *modify* E.F.'s IEP—yet another form of relief the IDEA makes available. *See Burlington*, 471 U.S. at 370; Zirkel, *supra*, at 16 nn.67-68, 17. As explained above, although respondents entered a consent agreement in 2012 stating that E.F. could bring a service dog to school, Resp. App. 10, the district did not (and could not) unilaterally change E.F.'s IEP. *See Honig*, 484 U.S. at 311 (describing "the necessity of parental participation in * * * the development of the IEP"); 20 U.S.C. § 1414(d) (setting forth detailed procedures for modifying IEPs). The consent agreement specified instead that "[s]hould [E.F.] reenroll," her "IEP team [would] meet to identify steps to ensure [her] transition back to school and her receipt of a FAPE." J.A. 48-49. E.F. did not reenroll, and so the IEP was not changed. Resp. App. 10-11. Accordingly, a declaratory judgment that it is unlawful for the district to exclude E.F's service dog, would require a host of changes to E.F.'s IEP—concerning class schedules, accommodations for the dog's trainer, the role of the human aide, and so on. *See Cave*, 514 F.3d at 248 (describing how an order granting "permission to bring [a] service dog to school" would entail modifications to an IEP); Pet App. 49 (describing ways in which E.F.'s IEP would need to be changed). IDEA administrators are empowered (and uniquely well-equipped) to issue such an order, and so that relief, too, is "available under" the IDEA.

Petitioners object that the *purpose* of their suit is not to declare E.F's IEP unlawful, but only "to

redress the past social and emotional harm that E.F. experienced." Pets. Br. 44, 49. But petitioners' subjective intentions are irrelevant. Courts applying section 1415(*l*) must look at what the "civil action"—the complaint—is "seeking." That determination depends on the substance of the prayer for relief, not the motives plaintiffs promise lie behind them.

Petitioners also suggest that they could not obtain a modification of E.F.'s IEP through the administrative process because E.F. no longer attends respondents' schools. Pets. Br. 49. But there is no question that petitioners could have obtained relief when this dispute first arose. Indeed, the IEP *was* modified in response to their request that Wonder be allowed to accompany E.F. to school. Resp. App. 8. Petitioners explain they changed schools after nearly three years in order "to ensure that E.F. could most quickly and efficaciously vindicate her right to attend school with her service dog." Pets. Supp. Br. 5. Petitioners were free to make that choice, but voluntarily abandoning IDEA remedies does not make those remedies "[un]available"; if that were so, every plaintiff could avoid the exhaustion requirement simply by moving to another district or State and filing suit. *Cf.* Pt. III *infra* (noting that courts have declined to excuse exhaustion as "futile" in such cases). As explained above, *supra* pp. 39-40, section 1415(*l*) asks whether the "relief" the plaintiff "seek[s]" is available under the IDEA administrative process—it makes no difference that the plaintiff may not ultimately be entitled to that relief, whether that is because the plaintiff fails to state a claim, cannot prove her case, or voluntarily moots some aspect of the dispute.

C. Petitioners' Complaint Seeks Any Relief The Court Deems Appropriate

Finally, petitioners' complaint requests "any other relief this Court deems appropriate." Resp. App. 21. That request invokes the district court's broad remedial authority under Federal Rule of Civil Procedure 54(c), which provides that a "final judgment should grant the relief *to which each party is entitled*, even if the party has not demanded that relief in its pleadings." Fed. R. Civ. P. 54(c) (emphasis added). Petitioners' complaint thus affirmatively demands all relief to which "[t]he nature of the claim and the governing law" entitle them under Rule 54(c). *Charlie F.*, 98 F.3d at 992. Insofar as the allegations in petitioners' complaint would support the award of relief available under the IDEA, then, they seek it—including not only retroactive reimbursement, compensatory education, and an order to modify E.F.'s IEP, but the whole array of other remedies the IDEA makes available for plaintiffs who challenge the adequacy of the services a school provides to a child with a disability.

The Government dismisses this request as "boilerplate." U.S. Br. 34. That would come as surprise to the countless litigants and courts that have relied on similarly broad language as the basis for seeking and awarding relief. *See, e.g.*, *Boxer X* v. *Donald*, 169 F. App'x 555, 559 (11th Cir. 2006) (per curiam); *Jerron West, Inc.* v. *State of Cal., State Bd. of Equalization*, 129 F.3d 1334, 1337 (9th Cir. 1997); *see generally* Wright, *supra*, at § 1255. Furthermore, the Government's position would allow a plaintiff to evade exhaustion just by phrasing a request for relief in broad terms. The better rule is to take the complaint

at its word, and require exhaustion whenever the complaint's demand encompasses "relief that is also available under [the IDEA]."

III. PETITIONERS WAIVED ANY EXCEPTION TO EXHAUSTION

In a last-ditch effort to avoid section 1415(*l*)'s exhaustion requirement, petitioners argue, for the first time in this litigation, that they need not exhaust their claims because doing so would be "futile." This claim is not properly before the Court, and in any event it is meritless.

To be sure, not every case that seeks relief available in substance under the IDEA must be addressed through the administrative process. This Court has recognized that there are situations "where exhaustion would be futile or inadequate" even where a plaintiff seeks relief under the Act itself. *See Honig*, 484 U.S. at 327; *Smith*, 468 U.S. at 1014 n.17 (noting the practice of lower courts). Congress incorporated those exceptions into section 1415(*l*), providing that exhaustion is required only "to the same extent" as if the action had been filed under the IDEA.[10]

That cannot help petitioners, however, because they waived any argument that their claims should be excused. As this Court has explained, "[t]he burden * * * to demonstrate the futility or inadequacy of administrative review" rests with the party seeking to avoid exhaustion. *Honig*, 484 U.S. at 327

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[10] Exhaustion would therefore be excused, for instance, under "exigent * * * circumstances" where administrative procedures are incapable of providing relief in time. *Honig*, 484 U.S. at 327; *see* Autism Speaks Am. Br. 4 (describing situations in which "every moment counts").

Petitioners never argued below that their claim for money damages or their decision to remove E.F. from respondents' school rendered the IDEA's procedures futile or inadequate. Pet. App. 17. And although the Sixth Circuit expressed doubts about whether petitioners could have met their burden, petitioners' waiver meant the court "[could] not decide whether the exhaustion requirement should be excused as futile." *Id.* Thus, to the extent petitioners suggest that this case turns on the futility or inadequacy of the procedures set forth under section 1415(f) and (g), those questions are not properly before this Court. *See, e.g.*, *Adarand Constructors, Inc.* v. *Mineta*, 534 U.S. 103, 109 (2001) (per curiam) (the Court "ordinarily do[es] not decide in the first instance issues not decided below" (citation omitted)).

Realizing their predicament, petitioners ask this Court to hold that section 1415(*l*)'s proviso does not apply *at all* where resort to the IDEA's administrative process would be futile. *See* Pets. Br. 28-31. They argue that the words "seeking relief that is also available" "codified the futility principles excusing exhaustion when the administrative forum lacks power to grant the relief a plaintiff seeks in court." *Id.* at 35-36. They go so far as to suggest this means exhaustion is "[p]resumptive[ly]" not required where IDEA procedures cannot provide the form of relief a plaintiff seeks. *Id.* at 28 (in heading).

Petitioners are mistaken. *Honig* forecloses a "presumptive rule" that would excuse exhaustion. 484 U.S. at 327 (noting that "the burden in such cases, of course, rests with the" party seeking the exception). And the text of section 1415(*l*) cannot bear petitioners' interpretation.

There is no doubt that Congress intended to allow plaintiffs otherwise required to exhaust under section 1415(*l*) to benefit from the exceptions to exhaustion available in suits brought under the IDEA. But Congress fully embodied that intent by requiring exhaustion only "to the same extent as would be required had the action been brought" under the IDEA. 20 U.S.C. § 1415(*l*). If the words "seeking relief that is also available" screened out any claim for which administrative procedures would be futile or inadequate, then the "to the same extent as" language would add precious little. Petitioners' reading of the statute would thus render a portion of the statute "insignificant, if not wholly superfluous." *Duncan* v. *Walker*, 533 U.S. 167, 174 (2001); *see TRW Inc.* v. *Andrews*, 534 U.S. 19, 31 (2001). That is not what Congress meant. *See* Senate Report 15 (explaining that "to the same extent" meant that "[e]xhaustion of administrative remedies would thus be excused * * * when resort to those proceedings would be futile."); House Report 7 (noting that the House version of the HCPA would require exhaustion "where [it] would be required under the [IDEA]"). Petitioners cannot rewrite the statute to get around their failure to assert futility.

In any event, the futility exception would not get petitioners very far. Futility does not excuse exhaustion any time administrative procedures are unable to award the precise *form* of relief a plaintiff seeks. Rather, the Court has held that exhaustion is required if administrators can award "the *type* of relief requested." *McCarthy* v. *Madigan*, 503 U.S. 140, 148 (1992); *see also id.* at 147 (stating that the agency must be "empowered to grant *effective relief*" (emphasis added; citation omitted)). For instance, in

McCarthy, the Court found exhaustion of the plaintiff's claim for "Money Damages Only" futile because administrators could not award "*any* monetary remedy"—even under a different statute than the one the plaintiff had invoked. *Id.* at 142, 154 & n.6 (emphasis added).[11] Likewise, in *Greene* v. *United States*, 376 U.S. 149 (1964), the Court held that it would be futile for a plaintiff denied a security clearance under a 1955 regulation to challenge that decision under a 1960 regulation "[i]n view of the *substantial* differences between the two regulations"; but it expressly clarified that it did "not suggest that a claimant, seeking damages under a former regulation, need not resort to administrative proceedings under a new regulation where the new regulation contains *essentially* the same substantive requirements as its predecessor." *Id.* at 163 (emphases added). The other cases cited by the Government are to similar effect. *See McNeese* v. *Bd. of Educ. for Cmty. Unit Sch. Dist. 187*, 373 U.S. 668, 674 (1963) (deeming exhaustion futile because administrative procedures did not offer a "remedy *sufficiently ade-*

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[11] Petitioners and the Government suggest that *McCarthy* stands for the proposition that where a plaintiff requests money damages, that is necessarily the *only* type of relief he seeks. Pets. Br. 31; U.S. Br. 17. It does not. The Court expressly acknowledged that there "may be * * * some instances" in which "there are other things" a plaintiff seeking monetary relief "wants." *McCarthy*, 503 U.S. at 154. It held only that it could not "presume, as a general matter," that a plaintiff who sought recovery for "discrete past wrongs" and "specifically request[ed] monetary compensation only" would be satisfied with exclusively injunctive relief. *Id.* This case is different: the administrative process is capable of awarding monetary relief, and petitioners do not seek monetary compensation alone.

quate" (emphasis added)); *Mont. Nat'l Bank of Billings* v. *Yellowstone Cty.*, 276 U.S. 499, 505 (1928) (deeming exhaustion futile because the administrator "was powerless to grant *any appropriate relief*" (emphasis added)).

Nor have courts permitted plaintiffs for whom administrative remedies were available at the time of the alleged wrongdoing to avoid exhaustion by waiting until their relationship with the defendant school was at an end to sue. *See, e.g.*, *Polera*, 288 F.3d at 490; *M.P. ex rel. K.* v. *Indep. Sch. Dist. No. 721*, 326 F.3d 975, 981 (8th Cir. 2003); *Cudjoe* v. *Indep. Sch. Dist. No. 12*, 297 F.3d 1058, 1067 (10th Cir. 2002); *N.B. ex rel. D.G.* v. *Alachua Cty. Sch. Bd.*, 84 F.3d 1376, 1379 (11th Cir. 1996) (per curiam) ("If parents can bypass the exhaustion requirement of the IDEA by merely moving their child out of the defendant school district, the whole administrative scheme established by the IDEA would be rendered nugatory."). The record in this case shows that petitioners waited some three years from the time respondents first refused to allow E.F. to bring her dog to school before they enrolled her in another district. *See* Resp. App. 7-8, 10. That was ample time to let administrative proceedings run their course. Thus, even if the Court were inclined to reach the question whether petitioners may be excused from section 1415(*l*)'s requirement—which it should not do—that claim would fail.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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